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# TRANSCRIPT OF RECORD.

## SUPREME COURT OF THE UNITED STATES.

No. ~~419.~~ 193

JAMES R. SMITH, APPELLANT,

vs.

GEORGE MASON, ASSIGNEE OF FREDERICK P. SAWYER, ET AL.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

**FILED JANUARY 17, 1870.**

1 In the supreme court of the District of Columbia.

IN RE BANKRUPTCY OF F. P. SAWYER.

No. 48, bankruptcy docket.

*Petition of assignee for injunction.—Filed October 13th*, 1868.

To Hon. A. B. Olin, justice of the supreme court of the District of Columbia, sitting in bankruptcy:

The petition of Geo. Mason, of Washington, D. C., assignee of the estate Frederick P. Sawyer, a bankrupt, respectfully represents that the said Sawyer was, for a long time prior to the filing of his petition in bankruptcy, a member of the firm of Sawyer, Risher & Hall, contractors for the carrying of mails in the State of Texas; that said business is still carried on by the other members of said firm; that there are sundry unsettled accounts between the said Sawyer and the said firm, and the said firm are supposed to be largely indebted to the estate of the said Sawyer; that on the 24th day of June, A. D. 1868, your petitioner filed his bill in this court for a settlement of said accounts, and caused service to be made on C. K. Hall, a member of said firm, then in this city; that said bill has never been answered, and the said Hall has left the city, as your petitioner believes, has returned to Texas.

And your petitioner further represents that George Taylor, of this city, as agent for the firm of Sawyer, Risher & Hall, has recently
2 collected for the said firm from the government of the United States a large sum of money, to wit, four thousand seven hundred and fourty-four and $\frac{19}{100}$ dollars, ($4,744 19,) which money he now holds for said firm; that there are other funds due the said firm, which it is expected will shortly come into the hands of the said Taylor; that, some time prior to the bankruptcy of the said Sawyer, Risher & Hall made an assignment of the claim from which the said sum of money has been realized to Geo. E. Biddle & Co., of New York, as collateral security for the payment of a certain indebtedness of the said firm to the said George E. Biddle & Co., which indebtedness, it is believed, has since been paid; that the said George E. Biddle & Co. afterwards made an assignment of their interest in the claim to James R. Smith, as collateral security for certain indebtedness of the said firm of George E. Biddle & Co. to the said James R. Smith, which indebtedness, it is also believed, has since been paid.

Wherefore your petitioner prays that an order may be made, restraining the said George Taylor from paying out the said sum of money now in his hands, or any part thereof, or any money which may hereafter come into his hands, and belonging to the said firm of Sawyer, Risher & Hall, or either of them, pending the proceedings upon your petitioner's bill; and that the said George Taylor be required to furnish bonds, such as your honor shall approve, for the safe-keeping of said money, and for its production in this court when ordered.

GEORGE MASON, *Assignee.*

Sworn and subscribed before me this 13th day of October, 1868.

J. SAYLES BROWN, *Register.*

3 *Order enjoining George Taylor.—Issued October 13th*, 1868; *service acknowledged Oct.* 13, 1868.

Upon the application of George Mason, of Washington, in the county of Washington, and D. C., assignee of Frederick P. Sawyer, a bankrupt—

It is ordered that George Taylor, of Washington, D. C., be, and he is hereby, enjoined from paying out the money now in his hands, or which may hereafter come into his hands, belonging to the firm of Sawyer, Risher & Hall, upon any order which may have been made, or which may hereafter be made, by the said firm of Sawyer, Risher & Hall, or either of them, pending proceedings upon the bill for settlement of accounts between the said firm and the estate of the said Frederick P. Sawyer, filed in this court by the said George Mason, assignee, on or about the 24th day of June, A. D. 1868; and the *the* said George Taylor is hereby ordered to give bonds in the sum of twelve thousand dollars, with securities to be approved by this court, for the safe-keeping of said sum or sums of money, and their procuction in this court when ordered.

GEORGE P. FISHER,
*Justice Sup. Ct. D. C.*

Endorsement on order enjoining Geo. Taylor:

"Service acknowledged.

"GEO. TAYLOR.

"OCT. 13, 1868."

4 *Petition of assignee for rule to show cause.—Filed April 7th*, 1869.

To Hon. A. B. Olin, justice of the supreme court of the District, in bankruptcy:

The petition of George Mason, of Washington, D. C., assignee of F. P. *Fisher*, bankrupt, respectfully represents—

That by order of injunction issued from this court and served on George Taylor, of this city, on the 13th day of October, 1868, a certain fund belonging to the firm of Sawyer, Risher & Hall, of which firm F. P. Sawyer was a member, was restrained in the hands of the said Geo. Taylor; that your petitioner is since informed that James R. Smith, of New York, claims an interest in said fund.

Wherefore your petitioner prays that an order may be made by this honorable court, requiring the said Smith to show cause, on a day therein named, why said fund should not be paid to your petitioner, as assignee aforesaid.

GEO. MASON, *Assignee.*

Subscribed and sworn to before me this 7th day of April, 1869.
R. J. MEIGS, *Clerk.*

5 *Intervention of Risher & Hall.—Filed April 19th*, 1869.

Benjam. F. Risher and C. K. Hall, surviving partners of Sawyer, Risher & Hall, intervene in the matter wherein money has been enjoined in the hands of Taylor, the attorney of Sawyer, Risher & Hall, and they say that said money rightfully belongs to them and

not to said James R. Smith, who claims the same, because they say that the assignment or order given by said Frederick P. Sawyer in behalf of Sawyer, Risher & Hall was only a hypothecation or agreement that it should be held as a security to George E. Biddle & Co., to be applied, when received, towards the payment of a debt due by Sawyer, Risher & Hall to George E. Biddle & Co.; and it was expressly understood by George E. Biddle & Co. that they never could get the money from the United States except through the said Sawyer, Risher & Hall, to whom, under the law, the draft must be assigned; and that if, in the mean time, and before the claim should be allowed by the United States, the said Sawyer, Risher & Hall should pay off their debt to George E. Biddle & Co., then the money was not to be paid to them, but should be kept by Sawyer, Risher & Hall. And so before the United States ordered said money to be paid, to wit, in September, October, November, and December, 1867, and in January and February, 1868, the said Sawyer, Risher & Hall, and their survivors, after Sawyer went into bankruptcy, Risher & Hall, paid off and discharged their entire debt to George E. Biddle, and, in fact, left a balance of ten thousand dollars in their hands; and because the said Sawyer has become a bankrupt, the said Risher &
Hall are entitled to the money. It was obtained by Taylor, by
6 the endorsement of Sawyer, after he was a bankrupt, and when he had no right to make it.

And therefore they pray an order directing that said Taylor pay it to them; or, if paid to the assignees, that it be paid to their use.

GEO. W. PASCHAL,
*Attorney for Risher & Hall.*

*Assignment of bankrupt's effects.—Issued March 27th, 1868.*

DISTRICT OF COLUMBIA, *ss:*

Know all men by these presents that George Mason, of Washington, D. C., has been duly appointed assignee of the estate of F. P. Sawyer, of Georgetown, in the county of Georgetown, and D. C., who has been adjudged bankrupt by decree of this court:

Now, therefore, I, J. Sayles Brown, register in bankruptcy for said court, by virtue of the authority vested in me by the fourteenth section of the act of Congress, entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2, 1867, do hereby convey and assign to the said Geo. Mason, assignee as aforesaid, all the estate, real and personal, of the said F. P. Sawyer, bankrupt, including all property, of whatever kind, of which he is possessed, or in which he was interested, or entitled to have, on the 15 day of February, A. D. 1868, together with all his deeds, books, and papers relating thereto, saving and excepting such property as is exempted from the operation of this assignment by the provisions of said 14
sec. of said act:

7 To have and to hold all the foregoing premises to the said Geo. Mason, and to his heirs forever:

In trust, nevertheless, for the use and purposes, and with the powers, and subject to the conditions and limitations, prescribed and set forth in said act.

In witness whereof I have hereunto set my hand and caused the seal of said district court to be affixed this 27th day of March, 1868.

[SEAL.] J. SAYLES BROWN, *Register.*

*Answer of James R. Smith to rule issued.—Filed April 14, 1869.*

The respondent, James R. Smith, in answer to the rule issued against him on the petition of Geo. Mason, of Washington, D. C., says—

First. That he denies the jurisdiction of this court to proceed against him in this mode, and submits that question to the court.

Secondly. That the claim for money in the hands of Hon. George Taylor came to him by regular assignment, for a valuable consideration, long before said Sawyer went into bankruptcy; and he is now, and was at the assignment to him, the bona-fide owner of said claim per issue, with no knowledge of any intent on the part of Sawyer to go into bankruptcy.

Thirdly. He here files a true copy of the assignments from said Sawyer, Risher & Hall to Geo. E. Biddle & Co., dated January 20th, 1867, from said Geo. E. Biddle to the respondent; also the accept-
8 ance of said George Taylor, bearing date January 21, 1867, (marked Ex. A,) by which it will appear that the respondent became the owner of whatever funds might be found in the hands of said Taylor; and having acquired the same before said Sawyer went into bankruptcy, said Sawyer's creditors have not, nor has his assignee in bankruptcy, any right to any part of said funds.

He therefore prays that said suit may be dismissed, with costs.

J. W. MOORE,
*Counsel for Smith.*

9 *Testimony in open court.*

F. P. SAWYER.

Examined by Geo. W. Paschal, att'y for Risher & Hall:

Q. State if you gave that order, (Ex. A.)

A. Yes, sir. I was in Washington, attending to the business of Sawyer, Risher & Hall, when Mr. Clapworth, brother to T. B. Clapworth, who is a partner of Geo. E. Biddle, came over here to collect some money of me, if he could—an account of Biddle. Sawyer & Hall owed Biddle & Co. considerable at that time. I told him I had nothing with which to pay him. He wanted me to give him drafts on the P. O. Department. There were reasons why I could not do so at that time. He strongly urging me for something, I told I had, some four months previous, placed a claim in Mr. Taylor's hands to collect on the Quartermaster's Department, which would amount to six or seven thousand dollars, but that it would have to pass through the hands of Sawyer & Co., or, rather, have their endorsement when the account was made up, before the money could be obtained. He insisted on having an order at any rate, and I finally gave him an order on Mr. Taylor for the money, telling him at the time that it was my opinion that Mr. Biddle would be paid before the money was collected from the Quartermaster's Department; that when it was ready for collection, as the law was here, Mr. Taylor could not obtain the money without the
10 endorsement of one of the firm; and when the money was collected, if Mr. Biddle was not paid, the money was to go to Mr. Biddle in good faith. If he was paid, it would remain in the hands of the company.

(This testimony taken subject to exception by Mr. Moore as to its relevancy and competency.)

Q. State what you know of any payments made subsequent to that

time to Geo. E. Biddle & Co., before this account of the Quartermaster's Department was paid by the government.

A. I could not state anything with certainty in that matter. I know he has been paid something through you, Mr. Paschal, on a draft I paid on the department myself.

Q. When Mr. Taylor got this money—this draft from the government on account of Sawyer & Co.—it was brought to you for endorsement, and by arrangement with Taylor & Mason you endorsed it?

A. Yes, sir.

Q. You were then not advised whether Biddle had been paid or not?

A. No, sir.

Q. There is one transaction that was arranged between you and Biddle, and perhaps myself. I will get you to state how much money was paid through your brother, Mace Sawyer, to Biddle & Co. on the note of Mace's.

A. $10,000. That payment was in the shape of a draft on the P. O. Department. Biddle got that money probably about the 1st of May; that settled my brother's indebtedness.

Q. That was paid on a note given by your brother to Sawyer & Hall?

11 A. Yes, sir. The note was for some $18,000. Hall collected some $8,000 or $9,000, and my brother consented that a $10,000 draft should be given to cover the balance.

Q. Had that note been placed in the hands of Biddle as a collateral, just like this other?

A. Yes, sir. That note was placed in the hands of Mr. Biddle as collateral security, and by instructions from my brother. When I gave these drafts, my brother's mail pay was in my hands and under my control by authority, and when I gave this $10,000 draft I required Mr. Biddle to give up the notes, but agreed to put them in Mr. Taylor's hands. When the drafts were paid, Mr. Taylor was, by an article of agreement, to give me up the notes, which he did.

Q. So that, upon a compromise, Biddle got $10,000 out of that collateral?

A. Yes, sir; and the notes are in my brother's possession now.

Cross-examination by Mr. Moore, counsel for Smith:

Q. Was that $10,000 paid on account of indebtedness to Biddle individually, or to Biddle & Co.?

A. To Biddle & Co.

Q. I understand you to state that you do not know what your liabilities were to Biddle & Co. at the time you assigned this claim in the hands of Taylor?

A. No, sir; there was considerable, though; some $20,000 or $25,000.

Q. You are not able to state specifically any amount?

A. No, sir.

12 Q. When was it you say this $10,000 was paid to Biddle?

A. It was in two different quarters. The last quarter paid ended March 31, 1868.

Q. This whole negotiation was at first made with the partner of Biddle, was it?

A. No, sir; not by the partner, but by the brother of the partner.

Q. He was acting agent?

A. Yes, sir.

Q. And you do not know now how the accounts stand between Biddle & Co. and your house?

A. No, sir.

GEORGE W. PASCHAL, JR.

Examined by G. W. Paschal, att'y for Risher & Hall:

Q. Look at that account and state who made it up, (Ex. B.)

(Objected to by Mr. Moore.)

A. I made up that account in September, 1867. A P. O. warrant, or at least a warrant from the Treasury Department, was given to George W. Paschal for $25,000, which was the amount due from the Post Office to Sawyer & Co. for the transportation of the mails. Certain creditors of the firm of Sawyer & Co. (all of whose claims amounted to possibly over $50,000) came together and received a pro rata. Each of them submitted their accounts. On those accounts—I took the bulk of them, and made a pro-rata division, of the amount of $25,000. The percentage which each part received was 51 per cent.

Q. How much was Sawyer & Hall's account as then rendered?

A. The account of George E. Biddle was $25,476 33. There was a debt of Sawyer, Risher & Hall, and they recived their pro rata
13 of 51 per cent., which made them receive $12,948 91, plus $61 92 on account of expenses for telegrams, etc.; so that from this account, which had been necessary to get it under a deposit of two gentlemen down here, and each of them having a pro rata in favor of that—so that they received in reality $13,110 84.

Q. Did they execute to you a receipt for that, and to myself?

A. Yes, sir.

Q. Where did you leave that?

A. In the office books, among the papers of our law office in Texas, which are in transitu.

Q. That is, you put it in a receipt book.

A. Yes, sir; all accounts we kept in a printed receipt book. I took a receipt from each of the creditors for the several amounts. I went to the firm and requested they send in their account against the firm of Risher & Hall. They returned their account, from which I took this detailed account of $25,476 63 as the indebtedness.

Q. I will ask you to state if you know of the further transaction between Biddle and Risher & Hall, growing out of the dealing with Lathrop, Ludington & Co.

A. Yes, sir; Lathrop, Ludington & Co., who were creditors of Sawyer, Risher & Hall, sued in Texas, and recovered judgment for an amount of over $12,000; that judgment was satisfied by the acceptances of Geo. E. Biddle & Co., and endorsed by James R. Smith for the full amount of the judgment. There are two acceptances, two drafts
14 drawn. I am positive as to who drew them. Mr. C. K. Hall drew them or Sawyer & Hall, I am not positive which; but they came to Mr. Hall, in Washington, here.

Q. Did you ever draw drafts for Sawyer, Risher & Hall, in favor of Lathrop, Ludington & Co., on Geo. E. Biddle in some such way, or in favor of somebody for the use of Lathrop & Co., and endorsed by James R. Smith?

A. They were different papers, and the acceptances of Sawyer, Risher & Hall. The acceptances of Sawyer, Risher & Co. drew upon Biddle; Biddle accepted, and Mr. Smith endorsed to secure.

Q. Do you remember what corraterals Sawyer, Risher & Hall then gave through me as a security for these acceptances?

A. I do not remember them. I never saw them, but as a record of our office. The drafts, I think, were upon the Post Office. I have no means of refreshing my memory from our papers and documents in the office.

Q. Were you at a conversation between George E. Biddle and myself after he had realized the Mace Sawyer note, and do you know as to how his accounts then stood with the firm, and the action he wished taken in regard to them?

A. I have no recollection of the conversation with you. He was very often in the office conversing, and, as he confined his conversation more to yourself than to me, I am not positive.

15 Cross-examination by Mr. Moore, counsel for Smith:

Q. This is not an original account presented to you by George E. Biddle & Co. against Sawyer, Risher & Hall?

A. No, sir; that is my account that I made up for the creditors of Sawyer, Risher & Hall. I served each one of the creditors, whose name you see there, with a copy of the account, and also sent a copy to Messrs. Risher & Hall.

Q. And you took down the account from the paper

an account which Biddle & Co. handed me as the amount which the firm owed them.

Q. Was it simply an aggregate, or was it an open account, running for some time?

A. It was an open account.

Q. Do you remember the items that made it up?

A. I have no recollection of the items.

Q. You cannot remember when, nor the amounts, nor on what account?

A. No, sir; but I know the account run up several thousand dollars greater. I had a conversation with the bookkeeper as to the mode of keeping the entries on the payments that had been made.

Q. You say that Biddle & Co. on that occasion, as their pro-rata share, received a little upwards of $13,000. Was there nothing deducted out of that for expenses, attorneys' fees, or anything of that sort?

A. They paid over to George W. Paschal his fee, or his com-
16 mission rather, a certain percentage; that was ten per cent. Each one of the creditors bore a proportion of that.

Q. How was this money paid?

A. By a draft on the sub-treasurer of New York, and deposited with Jay Cooke & Co., and by them collected and endorsed over.

Q. Who drew that draft?

A. I am not sufficiently familiar with the manner of drawing drafts in the Post Office to say positively who drew the draft, but it came in the regular order of departmental business. It was a claim upon the Post Office in favor of these parties, or some of them—in favor of Sawyer, Risher & Hall for the transportation of mails—and a warrant was issued by the proper department here upon the sub-treasury of New York.

Q. Is that the same $90,000 referred to by Mr. Sawyer?

A. No, sir; I do not understand that as having anything to do with it.

Q. What became of the open account that Biddle & Co. presented to you on that occasion?

A. I have no positive recollection about that, further than that it was my custom, when an account was given to me, to file it amongst their accounts.

Q. Have you any knowledge of the transactions and the
17 amount of business then going on between Sawyer & Co. and Biddle & Co.?

A. No, sir; I have no positive knowledge of it. I did have at that time, because I had the data there, and the account before me to show their account-current.

Q. Don't you know the fact that even up to that time, and subsequent to that time, *that* Biddle & Co. had been advancing money to Sawyer & Co.?

A. I know it by their account-current, presuming they kept correct books.

Q. Up to the very period when you made a settlement?

A. Up to that very period. They rendered me an account-current up to the 13th September.

Q. Where was this suit of Lathrop & Co. against Sawyer, Risher & Co. brought?

A. In Austin. It was in 1867. Two drafts, I think, each for something over $6,000, were recovered.

GEORGE W. PASCHAL.

Examined on behalf of Risher & Hall, subject to exception by counsel of Smith:

I offer to go a little further back than my son had gone. Messrs. Sawyer, Risher & Hall were very large mail contractors in Texas in 1865. For the purposes of their business they purchased a stock of goods in New York City from various parties. As a means of negotiation in that purchase they drew upon Geo. E. Biddle & Co. I
18 am speaking of transactions now which I learned in my professional capacity with all the gentlemen. They drew upon George E. Biddle & Co. for a very considerable amount. They drew upon George E. Biddle for a very considerable amount. But the drafts were all about the date, and not long after the date, of the purchase of the goods, in the month of October, 1865. These bills or drafts upon that house amounted to over $25,000 in 1867—July 1, I think. I had placed in my hands, by these creditors, their debts against Sawyer, Risher & Hall for collection. The house, I should have remarked, lost all these goods, which was the cause of their embarrassment. They had gone into the hands of what was known as the firm of Baulds, Baker & Co.; and in consequence of the failure of Baulds, Baker & Co., who sold them on commission, the merchants had not been paid, so the debts were placed in my hands for collection. I came here, and in an interview with Mr. Sawyer, who was the managing man of the house of Sawyer & Hall in this city, it was agreed to give drafts on the Post Office to the amount of 50 per cent., or one-half, as was then estimated, of their debts, and time was to be given for the balance. I took two of these drafts, one in favor of John T. Martin & Co., whose claim I had first received, for $3,000 or $3,100. That amounted to his fifty per cent.

As a means of securing this other gentleman, Sawyer, in the name of Sawyer, Risher & Hall, drew upon the creditor of the P. O.
19 Department a draft for $25,000 upon the quarter due—I think, the 1st of July, 1867. You will understand that they pay contractors by quarters. Some delay occurred in consequence of the slowness in getting returns from Texas. The contractors were never paid, and the returns coming in. The certificates of service having come in, the defendants sent to me on the 13th of September, 1867, according to my accounts, a draft on the assistant treasurer, of N. Y., for $25,000. I then,

or perhaps I did it before, summoned the creditors of these gentlemen to make up and lodge their exact accounts against Sawyer, Risher & Hall, so that they must receive their pro-rata dividend, in accordance with the understanding at the time the drafts were executed. George E. Biddle & Co. presented their account for $25,476 33, which covered principal and interest up to that date, according to his account, and which account I scanned, for I was so cautioned by the other side, for its correctness. Among the creditors whom I might mention were Babcock & Co., for $12,871 17, and Mulford & Sprague, for $4,788 68. The other names I need not mention here, because they do not enter into it. At any rate, the whole debts presented by these gentlemen amounted to $48,952, or who had claims upon this $25,000, and the percentage, as calculated by my son at the time, and tested by some of the merchants there, was nearly 51 per cent.; and, in addition, there was an amount of expense incurred by Mr. Clapworth and Mr. Burts, who came down
20 here to see what I was doing, and some telegraphing, which amounted to $119, and which they agreed to divide and receipt accordingly, so that my son's statement about the amount receipted was correct.

And I may here answer Mr. Moore's question while I think of it, that I charged them the Texas fee for collecting the money, which was bargained for when I took their business.

Well, this account of Biddle and the other claims remained in my hands and under my control for future adjustment, with the agreement with the creditors that it was to be delayed. I should have mentioned that at the time I took this $25,000 I was not the attorney of Lathrop, Ludington & Co., but that they had placed their matters in the hands of a lawyer in Texas, who had sued. I tried to get them into the same arrangement, but failed. They got judgment against this firm of Sawyer, Risher & Hall, in Texas, and were about to levy upon their stage property, which would have broken up the business. Oct. 25, 1867, Mr. Hall, who was then here in the city, trying to wind up some of the old business, (Mr. Moore had gone pretty much out of the business,) came to me with the fact that his house was about to press their judgment, which would have destroyed them. Lathrop, Ludington & Co., as I had some arrangement by which time could be got, gave them
21 time to pay until some other payments came in. This 50 per cent. had run them very hard. I addressed myself to Biddle & Co. and to Ludington & Co. as a means of settlement some way of that debt. It resulted in an understanding that Hall should secure Biddle in the whole balance due him. Mr. Biddle stated, and I believe Mr. Hall agreed to it, that any expenses here, after that settlement, should be drawn for—about a thousand dollars; and a payment had come through Mr. Taylor *one* one thousand and odd dollars. I proposed this arrangement: Biddle should accept for Lathrop, Ludington & Co. at three and six months, and that Lathrop, Ludington & Co. should assign over the Texas judgment and place it in my hands, so as to hold the security against the property there; that Sawyer, Risher & Hall, or Risher & Hall, who then represented the firm, should draw drafts upon their pay, hereafter to accrue, to the amount of $26,000 or $27,000. It was agreed all around that there remained in the hands of Biddle, as collaterals, Mace Sawyer's notes, the brother of the gentleman who testified here, for $18,000 and odd dollars. I came down here with some other gentlemen to look after it. We had a number of interviews with F. P. Sawyer and Col. Hall, who were present, to get out a plan of op-

erations. Usually it resulted in this, that Sawyer, Risher & Hall drew in their own favor upon George E. Biddle & Co. for two amounts, which I take to be correct, as it comes from the house of Lathrop &
22 Co., $6,180 50—$6180 50 at six months—and, to protect Biddle & Co. in the further expenses, collaterals were given which would wipe either debt when it should be realized. I returned to New York with the drafts, and presented to Lathrop, Ludington & Co., with the endorsement by Sawyer, Risher & Hall. I got Biddle & Co.'s acceptances, presented them, and then some discredit was thrown upon the cause of Biddle & Co. by Lathrop, Ludington & Co., they to take them in payment for transferring their judgments. The paper being thus weakened, it resulted in calling upon Mr. James R. Smith to endorse for George E. Biddle & Co. for these two acceptances. After some hesitation and a little showing of temper about it, Mr. Smith gave the endorsement, and they accepted. That transaction closed, I took the assignment of Lathrop, Ludington & Co., of the Texas judgment, sent to my house in Texas, to my son, to be used should it ever become necessary. Discussion arose among us all. I think Mr. Smith was in one of those discussions, because he was dissatisfied with me because I had gotten him into this endorsement, and did not know how to get out of it, for he did not know where Biddle was going to land. He began to think he had gone pretty blindly upon my statement that he should not suffer. He came to me several times about it, and finally instructed to send this assignment down endorsed to Biddle & Co., and by them to
23 James R. Smith. I sent it down, when a new trouble arose, and that was as to how much Mace Sawyer owed upon his notes. They had been placed in Biddle's hands as collateral. He claimed there had been some road expenses. He had purchased out some of the mail coaches and horses, and all that sort of thing; and I had that to go through. It resulted in the agreement that Mace Sawyer owed $10,000, and should pay $10,000 and take his notes up, and he take them up in the manner testified to by Mr. Sawyer. At any rate, my understanding was they were paid. The first drafts drawn by Risher & Hall, then, for $6,000 and odd dollars having been paid, he came to me and said that he was overpaid.

The COURT. Who was that, witness?

Ans. Mr. Biddle.

He suggested—I won't say proposed—to me that I should sue and attach in his hands, on behalf of Babcock & Co. and Mulford, Sprague & Co., for the balance of their debts. The smaller debts had been extinguished by Hall. I told Mr. Biddle that it was contrary to the understanding; that these debts were not to be rushed, and I declined it. Biddle's statement was that he had got in his hands *ove* $10,000 over and above what was due him; and running over the figures I knew of Mace Sawyer's $10,000, the first payment of $6,000 and odd, and the balance on the P. O. Department still remaining, $18,000 or $20,000, placed him in advance. That I knew as well as he did. In the course of conversations with Mr. Smith about this matter, he told me that he had been backing Biddle's house; that they owed him, and that this Sawyer, Risher & Hall's had been hypothecated with him,
24 and something occurred about how much they had given him out of the $12,000. I knew Mr. Smith was not well satisfied with what he got. All these transactions that I have mentioned took place, and were closed before the maturity of this second note, which matured on the 6th of April, 1868. These are my general recollections.

Cross-examination by Mr. Moore:

Q. All these transactions about the affairs in Texas between Sawyer & Co., and between Lathrop & Co., Mr. Hall had nothing to do with; he never was connected with it until he became endorsee upon that draft?

A. No; Mr. Smith having endorsed draft at my suggestion, and upon my statement that I had it so secured that it would be met whether Biddle & Co. met it or not. Mr. Smith seemed dissatisfied, and took the assignment of the judgment to himself, so that if there should be *in* failure in Washington to pay it, he should be secured upon property of Sawyer, Risher & Hall, which was ample for the judgment. Smith was first consulted about endorsing a few days before the 25th day of October, 1867, when he did endorse.

Q. In all the conversations I had with him in reference to Biddle & Co. he always claimed that they were largely indebted to him, did he not?

A. Yes, sir; and they were. The house was tottering for some time, and kept up by Smith and Biddle's father. That was my understanding of it.

25 C. K. HALL sworn.

Examined by Judge Paschal:

Q. Will you state how much money you have paid to Biddle, or know to have been paid to him?

A. I cannot tell exactly the amount, but some sixty odd-thousand dollars, post-office warrants, in one way and another, that I have paid him.

Q. What are his just charges?

A. I cannot get at his account. I have been here two months to try to get him to make it up, but he won't do it. We have had two or three detectives looking for him, but they cannot find him. He is largely indebted to us, and he knows it, and took the advice of his lawyer not to make out his account at all.

Q. Who is this?

A. Biddle. He has failed, and has moved his family up in the country. His office in New York is locked up. I have been there for the last two days, for four or five hours, but couldn't find him anywhere. I understood from one of the firm that his advice was that he would not make out the account at all.

Q. Were these payments you speak of made under the power of attorney which you executed at my instance, and drafts drawn?

A. Yes, sir.

26 Q. What do you know about these creditors having attached anything?

A. I placed $100 in his hands, and telegraphed to Col. and my partner in Austin to draw on me for that amount, and he thereupon goes to Babcock & Co., and Mulford & Sprague, and tells them that this money was in his hands, and there was a good chance for him to stop it. He was getting the use of this money; I just loaned it to him, because exchange was worth something to us in Austin, it being at the rate of one and a half, and sometimes two per cent. They did as he suggested, and locked the money up in his hands; he has had the use of it ever since. He is behind with us from $10 to $15,000; I cannot tell exactly how much until I get the account.

Cross-examination by Mr. Moore:

Q. What paper is that?

A. It is a memorandum, taken from money paid out on warrants.

Q. How came this vast amount of money to be paid over to Biddle & Co.?

27 A. We owed money in New York to different parties—some of it at first to them, and some of it I paid to him, as an accommodation, to draw drafts whenever we were in Austin.

Q. How came you to swell to $60,000?

A. He promised to take up this other paper we had in New York of Babcock & Co., Mulford & Sprague, and Martin & Co.

Q. You say that you paid Mr. Biddle $60,000?

A. I drew some drafts against that, but I cannot find the account.

Q. When did you go to Mr. Biddle to have a settlement finally?

A. Last summer, and for the last two months I have been here. He promised me at one time that he would have it made out. I sent Mr. Scott, our agent, to get it, and promised him; but finally refused.

Q. You have never had any final settlement; but when the books can be produced on each side, is it your opinion he will be found to be in your debt?

28 A. Yes, sir.

Q. Have you made an assignment to Biddle & Co.?

A. No, sir; we gave them a mortgage in order to secure these other parties in New York. He was acting as a kind of receiver or agent.

Q. When was it you made that mortgage?

A. I think it was last January or February, a year ago.

Q. State what was the consideration of that mortgage you executed to Biddle.

A. It was for the payment of our different debts, these and Abbott & Co. included. We had ten vouchers of Abbott & Co., of New York, and we owed them altogether some $15,000 or $16,000.

Q. You made a mortgage to Biddle?

A. Yes, sir; to secure all the creditors in the North. It was a deed of trust.

Q. Has the mortgage ever been settled?

29 A. No, sir.

Q. Does that mortgage acknowledge any indebtedness to Biddle.

A. No, sir, I think not; only as trustee or agent for other parties.

Q. Does not that deed of trust recite that the firm of Sawyer, Risher & Hall was indebted to Biddle?

A. I do not recollect how it does; but it was done at the request of Abbott. He selected George E. Biddle as an agent to settle all these debts, and I gave him this mortgage in order to secure all parties.

By Judge Paschal:

Q. As I understand you, you gave a deed of trust, and Biddle became the trustee to pay off your debts?

A. Yes, sir.

Q. And among other things which he was to receive was your mail pay, and that is the reason why warrants are charged in your accounts?

30 A. Yes, sir; he received $2,800 that had been misapplied, that ought to have gone to Abbott & Co.

Q. The last money that he drew, did he pay it to them?

A. No, sir.

By Mr. Moore:

Q. That deed of trust has never been settled up by any judgment or proceeding in court in New York, has it?

A. No, sir.

Q. You say Mr. Biddle is the trustee. He has never been called upon by any court, under any decree of court, to make any payment. Will the property there secured pay all your debts?

A. I do not know whether it will or not. It won't, unless we get this money out of Biddle's hands that we claim he owes us.

F. P. SAWYER recalled:

Q. Had you anything to do with arranging a deed of trust?

A. No, sir.

31 SAMUEL T. SCOTT sworn.

Examined by Judge Paschal:

Q. State what have been your relations to the house of Sawyer, Risher & Hall.

A. I have been in the employment of Sawyer, Risher & Hall, and of their surviving partners, Risher & Hall, for nearly eleven years.

Q. State whether you have seen Mr. Biddle on the subject.

A. Yes, sir; I was in New York in February. I saw Mr. Biddle in company with Mr. Hall. Mr. Eastman was also present. I did not hear the purport of the conversation. Mr. Hall, after the conversation, remarked to me, "I must go on over to Washington; Mr. Biddle will have his account made out at once, and you remain here and get it." I remained there ten days, probably; visited his office every day except Sunday; once a day at least, sometimes twice. I failed to see Mr. Biddle during that whole time. I saw his partner nearly every time I went, and he put me off from day to day, stating that the books had been kept in a peculiar manner with which he was not at all conversant, and that he could not draw up the account for me for that reason, but that he would get Mr. Williams—I think he called the gentleman's
32 name—who had been the bookkeeper of the firm, who was then doing business for another firm a short distance off, to come over and draw the account up. Things went on in that way, and I, at last wearied of waiting, came over here and reported the fact to Mr. Hall, and afterwards I went back again. They continued to put me off from day to day with promises, and give me the account up to a given date anyhow. He sat down and went to work. I sat there for half an hour. Finally he turned round and remarked to me, "You need not wait; I cannot finish this to-day; you shall have it to-morrow; I have an engagement this afternoon." I asked him at what hour I should call the next day, and he said, "Not before one o'clock." I called the next day at one, and waited until four o'clock before he made his appearance at all. He then told me he could not do what he had promised; that it was useless; and he would get the former bookkeeper next Sunday to draw off the accounts. The following Monday I went, and he had not gotten Mr. Williams to get the account off. He then asked me the question, "Did George promise to give you this account?" I said he did not promise me, but Mr. Hall told me he had promised him he should have it, and that I didn't like being put off in the way
33 I had been. He said that he could not help it; that he could not get the account. I came away and went a third time from here to New York. I then failed to see Mr. Biddle, though I went to his

office every day. At last Mr. Clapworth had taken the advice of a lawyer and would not make any account at all until he was compelled to do so by the court.

Q. From what data was that account of Biddle made up?

A. This memorandum of balance due, as per your statement in September.

(Taken subject to exception on the part of Mr. Moore.)

Two acceptances amounting to $12,361, taken from Lathrop, Luddington & Co.'s account, which is there; a draft on Sampson & Hendricks for $10,000, which I have a personal knowledge of, being in Austin at the time that the draft was made upon them from Biddle & Co., and it was paid by Sampson & Hendricks to the firm at Austin; here is another small draft of Mr. Hall, which, I understood, he had drawn from Mr. Biddle, but of that I have no knowledge, amounting in the whole to $35,888 72.

Q. That is what you make it out to be—his books against your house?

34 A. As near as I have any knowledge.

Q. How do you make out the charges against Biddle?

A. Simply from information. These warrants I took from the P. O. account. They are drawn in different names; some in the name of Biddle & Co., one in the name of Green, some in the name of Claflin & Co., N. Y., and some in the name of Sawyer, Risher & Hall.

Q. Did they all go through that authority?

A. I cannot tell you; I am not the bookkeeper of the concern.

Q. What do you make the debts there against Biddle & Co.?

A. $61,401 94.

Q. What do you know about the deed of trust that Mr. Hall has spoken of?

A. I know nothing of it, except having seen a copy of it in Austin. It is recorded there.

Q. What debts did that undertake to secure?

35 A. My recollection of it is, that it undertook to secure the payment of $6,000 of Abbott, Downing & Co., which amount Risher & Hall had drawn against Biddle, and obtained cash, as I understand it, on the draft, Biddle accepting but never paying; also, for a previous draft on Biddle & Co., which Biddle promised to pay and never did, amounting to, I think, $9,600. He was also to pay Babcock & Co. all the debts due in the city of New York. He was to pay off these debts—all the debts in the city of New York.

Q. Biddle was acting as trustee between your house and these creditors, holding Risher & Hall's power of attorney?

A. Yes, sir.

Q. And these warrants that you have entered there is the money that was drawn up to that time?

A. Some of it was drawn previous to that time, I think. I think, though, he had another power of attorney previous to the one that is now on file in the P. O. Department, but of that I have no positive knowledge.

Q. What property did this trust-deed cover?

36 A. All the horses, harness, coaches, and other property belonging to this company running the stages in Texas. The power of attorney covers the mail pay. He was to receive the mail pay as it fell due, and pay off these debts. The understanding of the parties, as they had informed me, was that the money s. uld be paid immediately upon its receipt.

Q. What excuse was given by Mr. Biddle, when you saw him, for not paying?

A. I had no conversation with Mr. Biddle on the subject. Mr. Eastman, the attorney of one of the parties, had a conversation with him in my presence, in which he admitted he ought to have paid some $3,700 he had drawn on account of the $6,000 to cash acceptances. That was the first thing to be paid, as he understood it. I have in my possession a copy of a letter from George E. Biddle & Co. to Abbott, Downing & Co., Concord, N. H., in which he admits that the $6,000 must be the first thing paid after collecting under the deed of trust. He told Mr. Eastman the reason he didn't pay the $3,000 was, that he thought he would hold on until he got enough to make up the full $6,000. Unfortunately, when called upon to pay the $3,700, he did not have that, and he asked for a few days' time given him—thirty days' time.

37 Q. Is it paid yet?

A. No, sir.

Q. Then, as I understand it, the whole of your evidence is, that Sawyer, Risher & Hall, and Hall and Risher, being indebted to various parties, made Biddle the trustee to pay off these debts, and gave him control of their mail pay here until it should be paid, and gave a mortgage on the property in addition?

A. Yes, sir. His power of attorney was to run until the first of July next, and was to cover all that was to accrue to that house.

Cross-examination:

Q. Have you personal knowledge of these facts that you have detailed here as a witness?

A. I have a personal knowledge of all I speak of as personal.

GEORGE TAYLOR sworn.

Examined by Judge Paschal:

Messrs. Sawyer, Risher & Hall placed in my hands various
38 accounts against the Quartermaster's Department. The quartermaster *liberally* deducted 33⅓ per cent. from the amounts that they charged. Mr. Sawyer was here at the time, and I reported the fact to him. He objected to the reduction; stated that it was unjust, and that he could not afford to do the transportation for less than they had charged. I saw and presented the fact to Gen. Meigs, but he would not act in the matter; then presented the fact to the Third Auditor and Second Comptroller, and they allowed on the first and second accounts the whole amounts as it was charged, notwithstanding the arbitrary action of the Quartermaster's Department.

When they were returned to the War Department for warrant, the quartermaster refused to allow a warrant to be issued for more than he had approved, notwithstanding the allowance of the accompting officers. Mr. Sawyer was exceedingly anxious to avail himself of the amount that was allowed, and, by an agreement between Gen. Meigs and myself, I was to write a protest against the action of the department, but consent, under the protest, to receive the two-thirds, with the distinct understanding that the question was to be kept open, and if we could
39 furnish additional evidence to the Quartermaster's Department that the third deducted was nevertheless right and proper to be allowed, and only what citizens in Texas paid, that the Quartermaster's Department would allow the whole.

Mr. Sawyer procured the testimony of Governors Pease and Hamilton, and the affidavits of one or two gentlemen to that fact, that the

charges were the same as citizens paid. But, unfortunately, Gen. Meigs' health broke down during this process, and he was relieved, and Gen. Rucker took possession of the department, and refused to act in the matter, or to acknowledge the force of these affidavits, and stated the department had paid all the service was worth, and they would pay no more. I appealed the question from that department to the War Department. It was pending there for some time, when, anxious to secure the benefit of early action of the Court of Claims in behalf of these gentlemen, and, knowing an action there would prevent the negotiations being carried to a finality in the payment without some understanding on that subject, I addressed myself to President Grant, who was then acting as Secretary of War ad interim, and he readily consented I should commence the action without any prejudice in the department. I then commenced an action for this 33⅓ per cent. in the Court of
40 Claims, but continued prosecuting my appeal until, finally, by very nearly three years' application to the claim, I succeeded in getting the amount allowed. Prior, however, to the final adjustment of this 33⅓ per cent., collected a portion of the money, and in the fall of 1867, I think it was, a part of it was embraced in the general understanding of the money that was paid over to Mr. Biddle or Mr. Smith on this order, and, by an arrangement with Mr. Sawyer, the amount was fixed, and the thousand and odd dollars transmitted direct to Mr. Smith upon the receipt of the first draft from the department on this 33⅓ per cent. reduction, which was four thousand and some odd dollars. I notified Mr. Sawyer that I had received the drafts. Prior, however, in point of time, Mr. Mason had notified me that Mr. Sawyer had gone into bankruptcy, and that he claimed, as the assignee, this money when it should be collected. On seeing Mr. Mason, I told him that when the money was collected all parties would be notified of the fact, so that there would be no hasty or inconsiderate payment on our part, that all the interests would be considered; and when this was received I notified Mr. Sawyer, and by agreement between Mr. Mason, Sawyer, and myself, I, representing in fact the firm of Risher & Hall,
41 the survivors of Sawyer, Risher & Hall, as the attorney, and acting as if employed in a true character, wrote this draft, being outstanding in Mr. Smith, of N. Y. It was understood Mr. Sawyer should sign the name, with the consent or under the direction of the assignee, and with my warrant as the attorney of all parties, so that the money might be drawn, and the money was so drawn. The order was an order *was an order* which I procured, enjoining that money in my hands, so that I would not be placed in the position of acting without the direction of the court. The order was a somewhat stringent one, I thought, and declined complying with the order, but still said I would place the money where it would be secure. I however recognized my obligation to keep that money here, where all parties should be heard and have their rights. I was acting only as the attorney and trustee, and had no business to interfere or judge between them. A second draft has been issued, amounting to $1,332 53, which is still unendorsed and unpaid, and dated March 22, 1869.

Q. Do you consider yourself bound to hold that until you are told to deliver it up to somebody?

A. I think it was pretty well understood by all these parties that
42 there was to be no snap judgment, or payment, or inconsiderate action. I hold this fund in my hands in the way I have stated, for the interest of all parties, and subject to these contentions. I will state, in connection with the transaction, what I omitted, that

Mr. Sherman, I think it was in *in* the summer of 1867, mentioned to me that one of the firm of George E. Biddle & Co. was here, and that he had proposed giving an order for this money when it should be paid, and asked whether that would be agreeable, or the best way. I told him I should do whatever he proposed, as I was only a servant in the matter; and when M. Kenworthy called the next day with an order I accepted it, writing out on the back of the order carefully the conditions. I saw Mr. Sawyer a day or two afterwards, and told him it had been presented and accepted. I then remarked to Mr. Sawyer that it was rather a singular process, because they could not get the money, nor could I get the money, until Sawyer, Risher & Hall endorsed the drafts, because I had barely their authority to conduct the transaction. He said that was very true, but he presumed the draft of Biddle & Co. would be paid long before we recovered this money. Soon after I received a letter from Mr. Smith, informing me that this draft had been assigned to him, and I mentioned that fact, I think, to Mr.
43 Sawyer, and also to Mr. Hall, when I saw him next; and Mr. Biddle came on here, and mentioned the same fact to me, so that it seemed to be understood between the parties.

Q. State what part you have in these Mace Sawyer notes.

A. Some arrangement had taken place to the effect that Mace Sawyer was to give George E. Biddle & Co. drafts on the Post Office for $10,000 in liquidation of $18,000 and some odd dollars that were due on these notes, and that was the arrangement between the parties. Mr. Sawyer representing his brother, Mr. F. P. Sawyer, expressed a desire that these notes should be placed in *escrau* or in the hands of some friend, so that when these payments were made they should be given up; and a stipulation was drawn between the parties to the effect that the notes should be placed in my hands, to be held until the payment of the $20,000 drafts which Mace Sawyer had given, and I took the stipulation and the notes, and when the drafts matured on the P. O. Department the amount of $10,000, less, perhaps, $49, had been paid. Mr. Sawyer brought the certificates of the Auditor to that effect, and he then placed me in funds to send the draft—$49—on to New York to complete the $10,000, which I did. Then as the contract or stipulation between
44 the parties seemed to make me the judge of when it was paid or when it was not paid, I decided, upon the certificates of the draft, that the $10,000 had been paid, and returned the notes to Mr. F. P. Sawyer as liquidated and paid. I do not know what these notes were given for, or anything more about the transaction.

JAMES R. SMITH sworn.

Examined by Mr. Moore:

Q. Was that assignment made to you by George E. Biddle & Co.?

A. Yes, sir.

Q. I want you to tell the court whether you got that assignment in good faith as a creditor of Biddle & Co.

A. I did.

Q. State whether, when you obtained that assignment of this claim, you had any notice that there were any conditions about its payment, such as it was not to be paid if the indebtedness of Biddle & Co. from Sawyer should be paid.

45 A. No, sir; there were no conditions at all.

Q. Biddle & Co. were indebted to you?

A. Yes, sir; I do not recollect the precise amount, but from $15,000 to $40,000.

Q. And it was as security for so much of this indebtedness that you took this assignment?

A. Yes, sir.

Cross-examination by Judge Paschal:

Q. Had you an interest in the firm of Biddle & Co.?

A. No, sir.

Q. Did you receive from Biddle & Co. these other collaterals of Sawyer, Risher & Co.?

A. Yes, sir.

Q. State whether he had the Mace Sawyer note as collateral?

A. Yes, sir.

46 Q. Did you turn it over to Biddle & Co., and make this arrangement that you have spoken of?

A. No, sir.

Q. How did they get possession of it again?

A. It was in Mr. Taylor's hands.

Q. At your instance, or whose?

A. I declare I do not recollect. I know that Mr. Clay received $10,000, which was credited to me, and that I gave the note or notes.

Q. Do you remember receiving the $12,000 paid through me, or any part of it?

A. No, sir; I never received any part of it; I do not think I did; I have no recollection of receiving any of it.

Q. These endorsements you gave were protected by Geo. Biddle, were they not?

A. Yes, sir.

Q. You remember about these endorsements?

47 A. Yes, sir.

Q. Don't you remember that the $1,014 went upon the books of Biddle & Co.?

A. I do not know anything about that.

Q. But in due course of business he would have credited them with that amount, would he not?

A. I should think so; I credited Mr. Biddle with it; I do not know what Biddle did.

Q. You are claiming this money as something towards a balance due you?

Ex. A.

WASHINGTON, D. C., *Jan'y* 20, 1867.

Hon. GEO. TAYLOR.

SIR: You will please pay over to Messrs. Geo. E. Biddle & Co. the amount in your charge, for collection at the Quartermaster's Department, when collected, say some $6,000 or $7,000, after deducting your fees, &c.

Very respectfully, your ob'd'nt serv'ts,

SAWYER, RISHER & HALL.

SEPT. 19, 1867.

Received on account $1,014 53.

JAMES R. SMITH.

48 Accepted to pay whatever may come into my hands, less fees, &c., as specified.

GEORGE TAYLOR,

*Att'y for Messrs. Sawyer, Risher & Hall.*

WASHINGTON CITY, D. C., *Jan. 21st*, 1867.

Pay to order James R. Smith.

GEORGE E. BIDDLE & CO.

Let this be read as a deposition.

GEO. W. PASCHAL,
*Att'y for Sawyer, Risher & Hall.*

CITY AND COUNTY OF NEW YORK, *ss:*

Personally appeared before me, a notary public within and for the said city and county, Geo. E. Biddle, who, being duly sworn, deposes and says that the order and draft drawn by Messrs. Sawyer, Risher & Hall on Geo. Taylor, of Washington City, in favor of George E. Biddle & Co., for the proceeds of a claim then pending in the Quartermaster's Department, dated the 20th day of January, A. D. 1867, was taken by the said firm of Geo. E. Biddle & Co. to secure the payment of money and credits advanced by said firm to the said Sawyer, Risher &
49 Hall; that the said firm of Sawyer, Risher & Hall was then largely indebted to George E. Biddle & Co. and still remain so indebted to the said firm of George E. Biddle & Co.; that soon after—in fact, within a few days after receiving said order—the firm of George E. Biddle & Co. assigned and transferred the said order and acceptance for full value received to James R. Smith, with the knowledge and consent of the said firm of Sawyer, Risher & Hall; that this deponent gave Sawyer, Risher & Hall notice of such assignment and transfer immediately thereafter; that the said order or draft was taken in a regular business way, at the date of the same, and was duly and regularly assigned to said Smith for full value received; that the accounts of the said Sawyer, Risher & Hall with the firm of George E. Biddle & Co. have never been settled up, but this deponent verily believes that they are still largely indebted to the said firm of George E. Biddle & Co., and that the said order and acceptance is the property of the said James R. Smith, and that the said Sawyer, Risher & Hall long since recognized said Smith's claim to the same by making a payment to him on said order through their attorney, Geo. Taylor.

GEORGE E. BIDDLE.

Sworn to before me the 21st day of April, 1869.

GEO. V. N. BALDWIN,
*Notary Public City & County of New York.*

50 *Order for Geo. Taylor to pay to assignee.—Filed Ap'l* 26, '69.

IN RE F. P. SAWYER.

48, bankruptcy.

It appears that at most the securities in the hands of George Taylor were hypothecated to James R. Smith, who held the same as collateral from George E. Biddle & Co.; Smith was thus not a bona-fide purchaser, but was only to credit Biddle & Co., when he got the money, and they were to credit Sawyer, Risher & Hall. But before Taylor got the money or draft from the government, Biddle & Co. were paid their debt by Sawyer, Risher & Hall. They consent to the endorsement, and Risher & Hall make themselves parties, and agree that the money shall be paid to Mason, the assignee of Sawyer, for the benefit of the creditors of Sawyer, Risher & Hall.

It is therefore ordered, adjudged, and decreed that George Taylor pay the nett balance in his hands due to Sawyer, Risher & Hall to Mason, the assignee, to be used in his arrangement for the benefit of the creditors of Sawyer, Risher & Hall; further ordered that the costs of this proceeding be paid out of the fund.

A. B. OLIN, *Justice.*

51 *Appeal to the court in general term.—Filed April 27, 1869.*

IN RE F. P. SAWYER.

48, bankruptcy.

Upon the motion of J. W. Moore esq., it is ordered, this 27th of April, 1869, that an appeal to the general term be entered from the decree rendered in this cause on the 26th inst.

By the clerk.

*Decree of the general term.—Filed Dec. 4, 1869, for the 29th Oct., 1869.*

IN RE F. P. SAWYER.

48, bankruptcy.

And now on this day came the parties—James R. Smith, the appellant, by J. W. Moore, his attorney; and the appellees, George Mason, assignee of Frederick P. Sawyer, the bankrupt, and Risher & Hall by their attorney, George W. Paschal—and the case was heard on the argument of counsel and the record in the case; and now the opinion was delivered by Mr. Justice Wylie, Chief Justice Cartter and Justice Fisher concurring, and Mr. Justice Olin dissenting. And it ap-
52 pearing to the court that in the decree of the court below there is error, it is therefore, this 4th day of December, 1869, ordered, adjudged, and decreed that the same be reversed and reformed.

And the court, proceeding to decree upon the law and the facts, does order, adjudge, and decree that the said Risher & Hall, the surviving or solvent partners of Sawyer, Risher & Hall, are entitled to the money collected from the government of the United States for the firm of Sawyer, Risher & Hall; that the defendant James R. Smith has no right to said money; and that the injunction heretofore granted in this cause be, and the same is hereby, dissolved.

It is further ordered, adjudged, and decreed that, after deducting his lawful commissions, the said George Taylor pay to said Risher & Hall, survivors of the firm of Sawyer, Risher & Hall, the balance of said money in his hands of said money collected on his account.

By order of the court.

D. K. CARTTER,
*Chief Justice.*

*Appeal.—Filed Dec. 4, 1869.*

IN RE FREDERICK P. SAWYER.

No. 48, bankruptcy.

From the decree pronounced in this cause on the 29th of October, 1869, James R. Smith prays an appeal to the supreme court of the United States.

53 *Appeal bond to the Sup. Ct. U. S.—Filed Dec.* 14, 1869.

In the supreme court of the District of Columbia, on the 14 day of Dec'r, 1869.

IN RE F. P. SAWYER.

48, bankruptcy, on appeal.

Know all men by these presents that we, James R. Smith and , are bound unto the above-named George Mason, ass'ee of F. P. Sawyer, bankrupt, and to Risher & Hall, in the sum of ten thousand dollars, to be paid to the said George Mason, ass'ee to said Risher & Hall, their executors or administrators; to which payment, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our, and each of our heirs, executors, and administrators, firmly by these presents, sealed with our seals, and dated this 14 day of Dec'r, 1869.

Whereas the above-named James R. Smith hath prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered in the above suit by the said supreme court of the District of Columbia:

Now, therefore, the condition of this obligation is, that if the
54 above-named James R. Smith shall prosecute his said writ of error to effect, and answer all damages and costs if he shall fail to make good his plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

JAMES R. SMITH. [SEAL.]
SAM'L BACON. [SEAL.]

Sealed and delivered in presence of—
R. J. MEIGS.

The foregoing bond is hereby approved. Dec. 14, 1869.
D. K. CARTTER,
*Chief Justice.*

DISTRICT OF COLUMBIA, *to wit:*

I, R. J. Meigs, clerk of the supreme court of the District of Columbia, do hereby certify the foregoing fifty-four pages of paper writing to be a full and perfect transcript from the records of cause No. 48 on the bankrupt docket of said court, based upon the petition of assignee therein for injunction against George Taylor, agent of Sawyer, Risher & Hall, and the intervention therein of Risher & Hall, and of the interest of James R. Smith.

Witness my hand and the seal of said court January 10, 1870.
[SEAL.] R. J. MEIGS, *Clerk.*

Cost of record, $17 10.

(Indorsement on cover:) No. 419. James R. Smith, appellant, vs. George Mason, assignee of Frederick P. Sawyer, & al. District of Columbia sup. court.
Filed 17th January, 1870.
REC. 419—3

# Supreme Court of the United States.

JAMES R. SMITH, APPELLANT,

*vs.*

GEORGE MASON, assignee of FREDERICK P. SAWYER, *et al.*, APPELLEE.

Frederick P. Sawyer, the bankrupt in this case, was the senior member of the firm of Sawyer, Risher & Hall, mail contractors. Before the bankruptcy of Mr. Sawyer, the firm held a claim against the United States for the transportation of troops. This claim was placed in the hands of George Taylor for collection, and while the claim was pending before the Quartermaster General, the firm of Sawyer, Risher & Hall, assigned the claim to George E. Biddle & Co., of New York, by an order on said Taylor to pay the proceeds over to Biddle & Co. when collected, which said order was accepted by said Taylor, the amount to be paid over when collected. Biddle & Co. sold this accepted order, and assigned it over to James R. Smith, the appellant in this case. On receiving the assignment Smith, and also said Biddle & Co., notified Taylor of the fact, and also the firm of Sawyer, Risher & Hall. Afterwards, and before the bankruptcy of Sawyer, Taylor collected about one thousand dollars on the account or claim, which was remitted to said Smith, according to the arrangement, and by the direction of Mr. Sawyer. Some time after this payment, and before any further collection was made on said claim, Sawyer went into bankruptcy, and the firm of Sawyer, Risher & Hall, was dissolved, Risher and Hall closing the business of the firm, as survi-

vors. After this date, the said Taylor received a draft on the Treasurer of the United States for a further sum of $4,744 19, which, by consent of all parties, was endorsed by Mr. Sawyer in the name of the firm, and the money collected by Mr. Taylor.

This endorsement by Mr. Sawyer, and collection of the amount by Taylor, was done by agreement of all parties; and the charge by counsel of Risher & Hall that it was improperly done, is simply the work of the fertile imagination of their distinguished counsel.

A short time after the collection of this sum, a further draft was issued for the sum of $——, which remains unpaid.

At the time of these collections and of the petition of George Mason, assignee, the accounts between the bankrupt partner and the survivors were unsettled, and the partnership debts were unliquidated and unpaid.

The assignee had filed a bill for an account, but the survivors had not answered the bill. At this stage of the proceedings, the assignee of Sawyer filed his petition in bankruptcy—(See page 1 of the case)—praying for an injunction against the said Taylor to restrain him from paying the money thus collected over to Smith or to Risher & Hall.

The order was granted on this petition and served upon Taylor, but he refused to obey it, except so far as keeping the money in the jurisdiction of the court, and subject to any action the parties might take.

On the seventh day of April, 1869, the said assignee filed a second petition praying the court to require the said James R. Smith to show cause why the money collected from the United States by said Taylor should not be paid to said assignee. (See page 2, fol. 4, of the case.) And afterwards, on the 19th day of April, 1869, Risher & Hall, survivors of the firm of Sawyer, Risher and Hall, filed their petition to intervene, claiming that said money rightfully belonged to them and not to the said James R. Smith.

The order to show cause was granted, and served on the said Smith, and he appeared by his counsel.

(See answer, printed case, p. 4.)

On the hearing of the case, the Court went into an examination of the accounts between Sawyer, Risher & Hall, and George E. Biddle & Co., and decided that the debt originally due to George E. Biddle & Co. had been paid off and satisfied; George E. Biddle & Co. not being present, having had no notice or order served upon the firm, or either of the members of the firm, and that the funds in the hands of said Taylor should be paid over to Mason, the assignee of Sawyer.

From this decree an appeal was taken by Smith. The court in banc reversed the decision of the court in bankruptcy, dissolved the injunction, and ordered the money to be paid over to Risher & Hall, the solvent and surviving partners, thus deciding the right of George E. Biddle & Co. and James R. Smith without notice to Biddle & Co., and in favor of the surviving partners, in this irregular proceeding.

From this decree the present appeal is taken.

## Points.

1st. The court in bankruptcy could not take jurisdiction in cases like this by mere order served on strangers to come in and answer. Neither Taylor nor Smith claimed anything from the bankrupt's estate, and neither of them was before the court claiming any debt or demand under the bankruptcy.

Sec. 1st of the act establishing the system.

Ex parte Bacon, 2 Mallory, 441, and other references in Taylor's Bankrupt Law, pp. 61, 62.

2d. The assignee of Sawyer had no right to sue for or recover the funds of the partners, Sawyer, Risher & Hall. He had no right to interfere with the partnership property or assets until the partnership debts were fully paid, and then only on an accounting between the partners, and so far

as the individual interests of Sawyer existed. And in any action for the recovery of partnership claims, the assignee and solvent partners should join.

See Eckhart *vs.* Wilson, 8 T. R., 140.
Taylor's Bankrupt Law and References, p. 96.

3d. The court below erred in going into the examination of the accounts between Sawyer, Risher & Hall and George E. Biddle & Co. No notice of any kind was ever served on Biddle & Co.; and yet it will be seen in the record that the court went into the examination of their accounts, and in their absence, and, without notice, decided that the claim of Biddle & Co. had been paid and discharged, and that they were bound to return the order on and acceptance of Taylor to the firm of Sawyer, Risher & Hall, and swear that Smith had no right to the funds in dispute. One of the fundamental principles of law is, that the rights of persons shall not be prejudiced without due notice.

Railroad Company *vs.* Trimble, 10 Wallace. 377.

4th. The court in banc, on appeal, erred in making a decree in the case. It had appellate jurisdiction only, and should have returned the case to the court in bankruptcy for further proceedings; but their decree shows the impropriety and irregularity of the whole proceeding, for the court decreed the funds to Risher & Hall, the solvent and surviving partners, as against Smith, a stranger in the court.

1st section of the act; and references in Taylor's Bankrupt Law, pp. 61–2.

MORE & BRIGHT,
*Counsel for the Appellant.*

# Supreme Court of the United States.

JAMES R. SMITH, Appellant,

*vs.*

GEORGE MASON, Assignee of FREDERICK P. SAWYER.

No. 193.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

BRIEF FOR APPELLEES.

On 20 January, 1867, Sawyer, Risher & Hall, having a claim against the Government of the United States for carrying the mail, in the hands of their attorney, George Taylor, addressed to Taylor an unstamped letter, in these words:

"WASHINGTON, D. C., *January* 20, 1867.

"Hon. GEO. TAYLOR.

"SIR: You will please pay over to Messrs. Geo. E. Biddle & Co. the amount in your charge, for collection at the Quartermaster's department, when collected, say $6,000 or $7,000, after deducting your fees, &c.

"Very respectfully, your ob'd'nt serv'ts,

"SAWYER, RISHER & HALL."

[Record, p. 18.]

On this Taylor wrote:

"Accepted, to pay whatever may come into my hands, less fees, &c., as specified. GEO. TAYLOR,

"*Att'y for Messrs. Sawyer, Risher & Hall.*"

The paper bears an indorsement, thus:

"WASHINGTON, D. C., *Jan.* 21, 1867.

"Pay to order James R. Smith.

"GEORGE E BIDDLE & Co."

Sawyer afterwards became a bankrupt. On 13 October, 1868, George Mason, the assignee of Sawyer, presented his petition, setting forth that he had filed his bill against Risher & Hall, the partners, carrying on the business of Sawyer, Risher & Hall, for the settlement of the partnership accounts; and that Taylor had collected $4,744 19 of the claim, and that other funds would come into the hands of Taylor for Sawyer, Risher & Hall; that prior to the bankruptcy of Sawyer this firm made an assignment of this claim to George E. Biddle & Co., of New York, as collateral security for the payment of a certain indebtedness to said firm, which indebtedness had been paid; and that said firm had assigned its claim to James R. Smith. Mason prayed an injunction against the payment of the money pending his suit against Sawyer, Risher & Hall. The injunction was granted; Taylor has never answered. (Record, pp. 1 and 2.)

On 19 April, 1869, Risher and Hall, surviving partners, intervened, and claimed the money, on the ground that the order on Taylor was a mere hypothecation of the claim, and that Biddle & Co. had been fully paid. (See Intervention, pp. 2, 3.)

James R. Smith, having been cited, appeared, and plead his claim to the money. (p. 4.)

Sawyer was sworn, (p. 4,) and explained, that, his firm being indebted to Biddle & Co. $20,000 or $25,000, he placed in their hands this order on Taylor, and a note on Mace Sawyer of $18,000, as collateral security; that on 31 March, 1868, Mace Sawyer paid $10,000 of his note, which went to the credit of Biddle & Co's account. This witness also states, that Biddle & Co. took the order, with the understanding that they could only get the money by an indorsement of the warrant after the claim should be allowed. (pp. 4, 5.)

Geo. W. Paschal and Geo. W. Paschal, Jr., proved that, in September, 1868, (which was before the payment of the $10,000 by Mace Sawyer,) Geo. E. Biddle & Co's claim against Sawyer, Risher, and Hall amounted to $25,476 33, and that they paid him of this $13,110 84. This made payments of $23,110 33, and left a balance of $2,366 of the debt, for which the claim was hypothecated. It is further shown, that Mr. Taylor afterwards paid $1,014 53 on this claim, which left a balance of $1,351 47 due. (pp. 9, 18.)

But these parties afterwards had new transactions. Biddle & Co. accepted for the debt of Lathrop, Luddington & Co. $12,361, and they received these gentlemen's orders on the post office for $26,000; so that Biddle & Co. were largely overpaid. (pp. 10 and 11; see also Taylor's evidence, pp. 16, 17, where he makes himself but the stakeholder.) Upon this evidence the chancellor decreed the money in the hands of Taylor to Risher & Hall, (p. 19;) and the general term reformed that decree. (p. 20.) But it was more clearly decreed that the money belonged to Risher & Hall, and that Smith had no right to it. Smith attempted to appeal.

## I.

As we understand it, Smith objects to the jurisdiction of the court over the subject-matter and the parties.

But to this we answer, that it is our desire, as we had supposed it to be his, to have this court settle the right. And if the question of jurisdiction is to be raised, we suggest, that underlying the whole is the principle, that no appeal lies in such a case from the general term of the Supreme Court of the District of Columbia to this court in a strictly bankrupt proceeding. To this we might cite the bankrupt statute and the great case *Ex parte* Christy, (3 How., 311, 317, 321, *et seq.;* 2 Brightly's Dig., p. 75, § 6.)

The principle that this court can only exercise appellate jurisdiction in pursuance to acts of Congress is not an open question. (Barry *v.* Mercein, 5 How., 119.) If it be conceded that section 9 of the bankrupt act of 1867 (2 Bright-

ly's Dig., p. 78, § 17) is negative pregnant, and that it allows appeals from the circuit to the Supreme Court, in all cases where the matter in controversy exceeds $1,000, it does not follow that such appeal lies from the Supreme Court of the District of Columbia, much less that such power has been exercised in a manner to give this court jurisdiction.

There is, in fact, no appeal order by the court; there is no appeal bond, such as is required by the statute; there is no notice of appeal; and no evidence that the appeal was taken in term, or ever, in fact, taken at all. These are all jurisdictional facts. (The County of Washington *v.* Durant, 7 Wall., 694; Castro *v.* The United States, 3 Wall., 49; The San Pedro, 2 Wheat., 132; Villabolis *v.* The United States, 6 How., 90; Bacon *v.* Hart, 1 Black, 38.)

II.

We insist, however, that, under the 1st and 2d sections of the bankrupt act, and the broad principles of the Christy case, the court, in the exercise of the powers given, had the right to do precisely what was done in this case; that is, to determine the right of the claimants to a fund in which the bankrupt estate had an interest. (2 Brightly's Dig., p. 74, §§ 1, 2, and notes; same law, 14 St., 517, § 1; and see *Ex parte* Christy, particularly the conclusion, 3 How., p. 321.)

The suit was brought originally by the assignee against the partners of the bankrupt for account. This fund was in the District, in the hands of the attorney of this firm, and the assignee brought the suit to enjoin the payment, either to the non-accounting partners or to Smith, who was understood to have set up some claim to the fund. Smith was properly cited to assert him claim to the fund. At this point the surviving partners intervened and set up their rights.

The bankrupt court, in the exercise of its legitimate powers, acquired a summary equitable jurisdiction over the subject-matter and the parties; and, having become thus

possessed of the cause, it might fully proceed to adjudicate the right.

We are not limited to the English principles. (*Ex parte* Klein, 1 How., 277; Mitchell *v.* Great Works Milling Manufacturing Company, 2 Story, 648; *Ex parte* Bowie, 15 Pitts, L. J., 448; S. C., 1 Bank Reg., 185; *Ex parte* Alexander, 17 Am. L. R., 423; S. C., 3 Bankrupt Reg., 6; 2 Brightly's Federal Digest, p. 23.)

III.

The appellant objects to the jurisdiction, because neither Smith nor Risher & Hall were creditors of the bankrupt, urging a claim against the estate. But they were claiming an interest in the bankrupt's assets; and no disposition could be made of this fund until the rights of these claimants should be settled. The jurisdiction expressly extends "to the collection of all assets of the bankrupt;" "to the marshalling and disposition of the different funds and assets among all the creditors; and to all acts, matters, and things to be done under and in virtue of the bankruptcy, until the final distribution and settlement of the bankrupt's estate, and the close of the proceedings in bankruptcy." The circuit and district courts have given an enlarged interpretation to this section, as may be seen by reference to 2 Brightly's Dig., p. 74, notes *a*, *b*, *c*.

IV.

The appellant objects, that the court heard evidence of the state of the accounts between the firms of Sawyer, Risher & Hall and George E. Biddle & Co., without the latter having been made parties. But to this it is answered—

1. That no such objection was urged or considered in the court below; and therefore it cannot be considered here. 2. That, as they had delivered the paper in controversy to Smith, to whom they had indorsed it, they were not necessary parties. 3. That they were heard by affidavits, without the power of cross-examination by Risher

& Hall. 4. That, as their possession was but a hypothecation, and Smith only claims by hypothecation, and under the act of Congress of 1852, neither could obtain the money, except through the indorsement of Sawyer, Risher & Hall, it was perfectly right to hear proof to show that the contingency upon which the money should become theirs had never happened and was impossible. 5. They were, in fact, represented by Smith.

V.

The decree that the fund did not belong to Smith was perfectly correct; the paper was not stamped, and, therefore, had no validity as a contract; it had no element of negotiability, not being for any certain sum; had no negotiable words; Smith's evidence showed that he paid nothing for it; had parted with nothing; but he only took it as collateral security for a debt due him by Biddle & Co.; gave them no credit for it, nor was he to give any, until he should realize the money: and, therefore, there was no element of good faith in his possession—nothing that would have enabled him to maintain an action against Taylor in his own name, or to urge an equity against Sawyer, Risher, & Hall.

The most that ever could have been said of the paper, had it been stamped, is, that it was an appointment in favor of Biddle & Co.; but an appointment legally and necessarily subject to the control of Sawyer, Risher, and Hall.

GEO. W. PASCHAL.

49. Sir Robert Peel

To Robert Peel a Bright